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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/053,713	01/24/2002	Tilo Christ	401-1012	4247

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EXAMINER

ASTORINO, MICHAEL C

ART UNIT	PAPER NUMBER
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3736

DATE MAILED: 09/11/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/053,713

Applicant(s)

CHRIST ET AL.

Examiner

Michael Astorino

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 16 June 2003.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 13-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 13-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)                      4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)                      5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_                      6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

1. The examiner acknowledges the amendment filed 6-16-2003, claims 1-12 have been cancelled, and claims 13-22 being added.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 13-15 and 19-20 are rejected under 35 U.S.C. 102(e) as being anticipated by

Lloyd et al.

4. In regards to claim 13 and 19, Lloyd et al disclose a method for monitoring a patient after the patient has been discharged from a medical facility, the method comprising the steps of: At a location of the patient during the monitoring after has been discharged form the medical facility (figure 1), providing the patient with a written questionnaire that gathers from the patient suitable for detecting a pulmonary complication (column 11, lines 41-64); Conveying the patient data in the written questionnaire (column 6, lines 19-43) to data over a telephone connection (60 modem) using one of a voice transmission and a facsimile transmission; and automatically evaluating the conveyed data with an evaluating device that is associated with the data bank (column 9, lines 16-63). In regards to the pulmonary complication questionnaire, Lloyd et al.

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specifically discloses the questions “did you cough during the night?” and “Did you need extra pillows to sleep?.

In regards to claim 14, 15, and 20, Lloyd et al disclose further comprising the step of monitoring receipt of the patient data at the data bank and sending a signal to at least one of the patient and a caregiver when the patient data are not received (column 7, lines 1-50).

5. Claim 16 is rejected under 35 U.S.C. 102(e) as being anticipated by Iliff US Patent Number 6,206,829 B1.

6. In regards to claim 16, Iliff disclose a method for monitoring a patient after the patient has been discharged from a medical facility, the method comprising the steps of:

Providing on a world wide web site a questionnaire that is accessible with a computer at a location of the patient during the monitoring after the patient has been discharged from the medical facility and that is connected to a communication network (column 71, lines 43-67);

Entering patient data in the questionnaire with the computer, the patient data suitable for detecting in the patient at least one of a pulmonary complication (column 35, lines 40-67 and column 36, lines 1-16); Conveying the patient data in the questionnaire to a data bank over the communication network (see figure 25a); and automatically evaluating the patient data with an evaluating device that is associated with the data bank (100 MDATA system).

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 16-18 and 21-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lloyd et al in view of Iliff.

In regards to claims 16 and 21, at a location of the patient during the monitoring after has been discharged from the medical facility (figure 1), providing the patient with a written questionnaire that gathers from the patient suitable for detecting a pulmonary complication (column 11, lines 41-64); Conveying the patient data in the written questionnaire (column 6, lines 19-43) to data over a telephone connection (60 modem) using one of a voice transmission and a facsimile transmission; and automatically evaluating the conveyed data with an evaluating device that is associated with the data bank (column 9, lines 16-63). Additionally, in regards to the pulmonary complication questionnaire, Lloyd et al. specifically discloses the questions “did you cough during the night?” and “Did you need extra pillows to sleep?”, but does not disclose using the world wide web. However, Iliff a reference in an analogous art discloses a questionnaire used over an alternative communication means being the Internet (column 71, lines 43-67; and figure 25a), which is synonymous with the world wide web. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the communication network of Lloyd et al in view of the communications means of the Internet of Iliff, since Iliff et al states the use of the Internet as a second optional system to telephone connection.

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9. In regards to claims 17, 18 and 22, Lloyd discloses further comprising the step of monitoring receipt of the patient data at the data bank and sending a signal to at least one of the patient and a caregiver when the patient data are not received (column 7, lines 1-50).

### *Response to Arguments*

10. Applicant's arguments with respect to claims 13-22 have been considered but are moot in view of the new ground(s) of rejection.

### *Conclusion*

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Astorino whose telephone number is 703-306-9067. The examiner can normally be reached on Monday-Thursday, 10:00AM to 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (703) 308-3130. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 306-5648.

Michael Astorino  
September 8, 2003

  
MAX F. HINDENBURG  
SUPERVISORY PATENT EXAMINER  
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